

**AREA PLAN COMMISSION OF TIPPECANOE COUNTY  
ORDINANCE COMMITTEE  
MINUTES OF PUBLIC MEETING**

DATE.....November 18, 2004  
TIME.....4:30 P.M.  
PLACE.....COUNTY OFFICE  
BLDG.  
20 N. 3<sup>RD</sup> STREET  
LAFAYETTE, IN 47901

**MEMBERS PRESENT**

Mark Hermodson  
KD Benson  
Gary Schroeder  
Steve Schreckengast

**MEMBERS ABSENT**

Robert Bowman  
Dave Williams

**STAFF PRESENT**

Sallie Fahey  
Margy Deverall  
Kathy Lind  
Jay Seeger, Atty.

KD Benson called the meeting to order.

**I. APPROVAL OF MINUTES**

Mark Hermodson moved to approve the minutes of the October 21, 2004. KD Benson seconded.

The motion carried by voice vote.

**II. ZONING REQUIRED FOR CONTRACTORS OF HEAVY CONSTRUCTION OTHER THAN BUILDING CONSTRUCTION other than building construction (SIC 16):** A continuation of

the discussion begun on September 1, 2004 with Mr. Hamilton and his attorney, Mr. Moore. Kathy Lind recapped the discussion regarding heavy construction zoning. She said he has a heavy construction contracting business at his residence, which falls under SIC 16, and the Zoning Enforcement Officer interprets as not being able to be a rural home occupation.

Steve Schreckengast asked what the zoning classification is on Mr. Hamilton's property.

Kathy Lind answered it is zoned A. She explained that SIC 15 and 17 are allowed as rural home occupations, but SIC 16 is not. She said Mr. Hamilton could rezone his property to I3, since outside storage of equipment is permitted by right in the I3 zone, but he has a house on the property and residences are not allowed in the I3 district. She highlighted the written proposal, pointing out the change of "Office facility of a contractor (Outside storage of equipment and/or materials associated with SIC 15 and 17 is permitted and must comply with the buffering requirement of 4-9-9 above.) Outside storage of equipment and/or materials associated with SIC 16 is not permitted and shall be stored inside a building." She explained that with the change, Mr. Hamilton would not need to rezone to I3, but would be required to enclose his equipment.

Sallie Fahey explained that Mr. Hamilton's business cannot be a primary use as a special exception in the A zone because he does not have enough land. She explained that a contracting business qualifies as a Rural Home Occupation as a special exception as long as there is only one other employee and a minimum land area of two acres, or as a primary use and 5 acres. She said Mr. Hamilton does not have at least 5 acres and his only option, other than rezoning, is to qualify as a Rural Home Occupation.

Kathy Lind also mentioned that the Section 5-5-5 Rural Home Occupation Use Requirements state that there can be no activity related to the Rural Home Occupation outside except storage.

Daniel Moore, 324 Main Street, PO Box 848, Lafayette, IN, said he disagrees with the Zoning Enforcement Officer's interpretation of the Ordinance and believes Mr. Hamilton's business falls under SIC 16. He said he does feel this compromise, though, gives Mr. Hamilton an option.

Steve Schreckengast asked what piece of equipment is at the root of the conflicting SIC interpretations.

Daniel Moore answered that Mr. Hamilton has an excavator and several bulldozers.

Steve Schreckengast asked how long Mr. Hamilton has had his contracting business.

Daniel Moore responded since 1994.

Steve Schreckengast asked if Mr. Hamilton has enough room on his property to build a pole-barn big enough to house all of his equipment.

KD Benson asked if there were nearby neighbors to the property.

Daniel Moore said the land surrounding Mr. Hamilton's property is all zoned A. He said he does not believe there is any direct interference with anyone else's land use.

Mark Hermodson said he believes this is a reasonable compromise.

Ron Highland, Building Commissioner, 20 N. 3<sup>rd</sup> Street, Lafayette, IN, suggested instead of requiring a pole-barn, that Mr. Hamilton could use some type of fencing to keep his equipment out of view.

Jay Seeger said that suggestion would not work under the current Ordinance because in most instances, we require storage *inside* a structure and not simply inside a fence. He said the Ordinance could be amended to allow storage inside a fence.

KD Benson asked if Mr. Hamilton had 5 acres, keeping his equipment inside a fence would be permissible.

Steve Schreckengast reiterated that with two acres, the equipment has to be enclosed.

Mark Hermodson said the setback and bufferyard minimums are not required if the property is two acres and the equipment is stored inside a structure.

Daniel Moore said as the Ordinance is written now, fencing is allowed with an SIC 15 or 17 use. He explained the nature of this problem is how the Ordinance is interpreted. He said he believes Zoning Ordinances are to be interpreted as broadly as possible, unless a certain use is specifically excluded. He said the buffering requirement for SIC 15 and 17 allows opaque fencing. He added that he interprets the Ordinance as requiring a structure for SIC 16.

Sallie Fahey explained the reasoning behind the allowance of opaque fencing for SIC 15 and 17 uses is that generally, the equipment required to engage in an SIC 16 business is much larger compared to the equipment for a SIC 15 or 17 use. She pointed out that the essential difference is that SIC 16 uses are classified as "heavy construction."

Gary Schroeder asked what qualifies as a SIC 15, 16 or 17 use.

Sallie Fahey said that SIC 15 allows building construction, general contractors and operative builders and SIC 17 allows special trade contractors like plumbers, painters, electricians, etc.

KD Benson said that having a structure to house equipment for a SIC 16 use is a good idea.

Steve Schreckengast stressed how this decision might impact others in the community.

Daniel Moore said he understands the difficulty of the decision. He believes the distinction is drawn upon the nature of the work to be done with the equipment. He said the discussion is the size of the machinery and does not believe that should be the relative interpretive criteria. He mentioned that many farms which are in the A zone have large, heavy machinery which do not pose a problem.

Steve Schreckengast said that Mr. Hamilton had an excavator, which he considers much heavier than a tractor.

Mark Hermodson explained there are quite a few 2-acre lots on county roads. He said if we change the Zoning Ordinance, it could create a large problem.

Sallie Fahey concurred. She believes the tendency will be to include some of the uses currently outlined in SIC 15 into SIC 16.

Steve Schreckengast said he feels an excavator kept on permanent tracks to be a heavy piece of equipment. He suggested finding another location for Mr. Hamilton to keep his excavator.

Daniel Moore said that Mr. Hamilton has a fair amount of equipment and that wouldn't be feasible.

Steve Schreckengast asked if it would be fair to allow anyone who bought a 2-acre piece of Agriculture-zoned land to have the same type of operation as Mr. Hamilton.

Daniel Moore said that would be fair. He explained that Mr. Hamilton has been operating since 1994 and it has never been a major issue.

Mark Hermodson pointed out it may not be a major issue on that particular site.

Sallie Fahey said the equipment probably accumulated over a period of time and was at a tolerable level four or five years ago.

Daniel Moore said he is reluctant to make the assumption that Mr. Hamilton's amount equipment is out of control without evidence.

KD Benson said that if this proposed compromise is allowed on this particular property, it could also be allowed on every other 2-acre piece of land in the county.

Daniel Moore outlined some of Mr. Hamilton's other options if this compromise is not allowed.

Sallie Fahey said his use in 1994 was not a permitted use and only by the adoption of the New Unified Zoning Ordinance in 1998 were Rural Home Occupations permitted.

Al Levy, Zoning Enforcement Officer, 20 N. 3<sup>rd</sup> Street, Lafayette, IN, emphasized that the discussion is not specifically about Mr. Hamilton, but rather a situation that would open the door for all kinds of other problems. He believes the proposed compromise was set forth to achieve Mr. Hamilton's goal over and above a decision that had already been made.

Ron Highland said that the use is not going to go away by putting the equipment under a roof. He asked how that requirement would be policed.

KD Benson moved to send the **Proposed Zoning Required for Heavy Contractors** onto the full Area Plan Commission. The motion carried by voice vote.

Sallie Fahey said that this Amendment will be included in an Omnibus Amendment at the January 19, 2005 Area Plan Commission public hearing.

### **III. SIGNS**

#### **a. Temporary and Event-Oriented Signs**

Sallie Fahey presented a letter from the Lafayette City Council Ordinance Committee. She asked if the Committee would like to refer it to Administrative Officers for a draft or have staff draft a proposal and bring it back to Ordinance Committee.

Jay Seeger said this was an issue that was discussed during the original adoption of the Unified Zoning Ordinance.

Steve Schreckengast said he feels this is something that would accommodate the sign company rather than the businesses they serve. He does not understand why a full-time legitimate business would need a temporary sign for 84 days.

Gary Schroeder said that perhaps a new business that did not have the regular sign installed would need a temporary sign for an extended period of time.

KD Benson said that having a sign up for 84 days defeats the purpose of a temporary sign.

Steve Schreckengast said that the temporary signs are usually in the right-of-way of the road.

Jay Seeger explained that the placement of the signs in the right-of-way is always the problem.

Steve Schreckengast said he would be in favor of having the sign business come to Ordinance Committee and plead their case.

Sallie Fahey said that the business has already come before the Lafayette City Ordinance Committee. She also explained that the Committee has the right not to put this issue up for discussion.

Mark Hermodson said he would agree with that as a first choice. He said that the Administrative Officers have to enforce temporary sign usage.

Al Levy said the memo refers to temporary signs but the signs in question are event-oriented. He explained that they are defined differently. He said that a temporary sign has no time limit on how long it can be in place but event-oriented signs has a limit of 21 days out of 90.

KD Benson asked if 84 days or longer could be defined as "temporary."

Al Levy said that temporary is defined but does not have a time limit on the display of the sign.

Gary Schroeder said that it is possible for a business to put up a temporary sign and keep it there indefinitely.

Al Levy concurred.

Kathy Lind said she believes the City has a different interpretation in that temporary and event-oriented signs are the same.

Al Levy said that the City has requested consideration to combine the two sign definitions.

Sallie Fahey said the Administrative Officers made a very clear distinction between event-oriented signs, which are portable, and temporary signs, which have to be attached to the building. She believes there is a need for a clear-cut definition, although she is not concerned about a time period for temporary signs as currently defined.

KD Benson said that the City of Lafayette is probably more concerned about event-oriented signs.

Sallie Fahey explained the City seems to be using the terms interchangeably and shouldn't be based on the definition.

Mark Hermodson said that he feels the Administrative Officers should look at it before the Committee makes a decision.

*Steve Schreckengast left the meeting.*

## **b. Rural Signs**

Al Levy explained the fee requirement for not-for-profit Rural Signs. He believes the solution is not to change the signs, but rather change the fee structure. He explained that Section 6-2-6 sets up a filing fee of \$10 and Section 6-2-9(a) reads that the filing fee applies to the Rural Signs. He proposed the following change to Paragraph (a): "the filing fee in 6-2-6 (a) and 6-2-6 (c) also applies to permit applications for Rural Signs except that there shall be no filing fee for a not-for-profit agency primarily engaged in offering emergency services to the public." He explained this targets fire departments, police departments, and the EMS. He presented the following change to Paragraph (b): "except that there shall be no permit fee for a political subdivision or a not-for-profit agency primarily engaged in offering emergency services to the public." He feels that Paragraph (a) and (b) should be identical. He explained that the addition of "political subdivisions" allowed the towns of Dayton and Battle Ground to waive the Rural Sign permit fee.

Jay Seeger says that once a fee is established, it applies to everyone and cannot be waived.

KD Benson asked how this proposed change in the wording would affect the Building Commission's collection of fees.

Ron Highland explained this change would have very minimal impact.

Al Levy said a permit for a Rural Sign would still be required, it would just be free for those not-for-profit agencies that primarily provide emergency services to the public.

Sallie Fahey said she would like this to include School Corporations. She asked if a School Corporation was a political subdivision.

Jay Seeger responded negatively but would check to make sure. He said that political subdivision is a defined term in the statute.

Sallie Fahey said that if School Corporations are not covered under the political subdivision definition, she would like them to be added to the list of not-for-profit agencies that have the Rural Sign fee waived.

KD Benson suggested that Jay Seeger do research on the definition of political subdivisions and visit the issue at the next meeting, December 1, 2004.

Sallie Fahey asked if the Committee would like to meet on December 1, 2004 since there is the Executive Committee meeting as well as the Board of Zoning Appeals meeting.

Jay Seeger suggested that the agenda for the December 1, 2004 meeting contain only this item and it can be voted on then.

Ron Highland asked if there was a list of what qualifies as a political subdivision in the Ordinance.

#### **IV. CITIZEN COMMENTS**

*None*

#### **V. ADJOURNMENT**

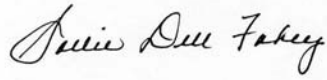
Mark Hermodson moved to adjourn. KD Benson seconded and the motion carried by voice vote.

Respectfully submitted,



Bianca Bullock  
Recording Secretary

Reviewed by,

A handwritten signature in black ink, reading "Sallie Dell Fahey". The script is cursive and elegant, with the first letters of each name being capitalized and prominent.

Sallie Dell Fahey  
Executive Director